

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JERAD T. ENGLISH,

Plaintiff,

V.

## PIERCE COUNTY, et al.,

## Defendants.

CASE NO. C17-5574 BHS

ORDER GRANTING  
DEFENDANT'S MOTION TO  
DISMISS

This matter comes before the Court on Defendant Pierce County's ("County")

motion to dismiss (Dkt. 9). The Court has considered the pleadings filed in support of the motion and the remainder of the file and hereby grants the motion for the reasons stated herein.

## I. PROCEDURAL HISTORY

On August 7, 2017, the Court granted Plaintiff Jerad English’s (“English”) motion to proceed *in forma pauperis* and accepted his complaint. Dkt. 2. English asserts a cause of action under 42 U.S.C. § 1983 against the County for failure to properly administer the Department of Assigned Counsel (“DAC”) and failure to properly train the attorneys working there. *Id.*

On October 26, 2017, the County filed a motion to dismiss. Dkt. 9. On November 30, 2017, the Court granted English's motion for an extension of time to respond and noted the County's motion for consideration on the Court's December 8, 2017 calendar. Dkt. 12. English did not respond.

## II. DISCUSSION

As a threshold matter, “if a party fails to file papers in opposition to a motion, such failure may be considered by the court as an admission that the motion has merit.” Local Rules, W.D. Wash. LCR 7(b)(2). The Court considers English’s failure to respond as an admission that the County’s motion has merit.

Motions to dismiss brought under Rule 12(b)(6) of the Federal Rules of Civil Procedure may be based on either the lack of a cognizable legal theory or the absence of sufficient facts alleged under such a theory. *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as admitted and the complaint is construed in the plaintiff's favor. *Keniston v. Roberts*, 717 F.2d 1295, 1301 (9th Cir. 1983). To survive a motion to dismiss, the complaint does not require detailed factual allegations but must provide the grounds for entitlement to relief and not merely a "formulaic recitation" of the elements of a cause of action. *Twombly*, 127 S. Ct. at 1965. Plaintiffs must allege "enough facts to state a claim to relief that is plausible on its face." *Id.* at 1974.

In this case, the County has established that English's complaint should be dismissed for numerous reasons. First, the County argues that English's federal claim is barred by the three-year statute of limitations. Dkt. 9 at 6–9. The Court agrees. English

1      alleges that, on November 1, 2013, he learned that his assigned counsel gave him  
2      incorrect advice regarding an out of state warrant for his arrest. Dkt. 3, ¶ 16. English  
3      filed his complaint in July of 2017, which is more than three years after the date he  
4      allegedly received incorrect advice. Therefore, English's § 1983 claim is barred by the  
5      statute of limitations.

6              Second, the County argues that English fails to state a plausible claim for relief.  
7      Specifically, the County asserts that English fails to allege a systemic failure by DAC to  
8      provide counsel for the accused, that the County acted with deliberate indifference, or  
9      that the County's alleged failures were the cause of English's injuries. The Court agrees  
10     that the complaint lacks sufficient allegations to establish the elements of a § 1983 claim.  
11     Therefore, the County has established that English has failed to state a claim on the  
12     merits.

13              Regarding the appropriate relief, in the event the court finds that dismissal is  
14      warranted, the court should grant the plaintiff leave to amend unless amendment would  
15      be futile. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).  
16      Although English could possibly correct the identified deficiencies regarding the merits  
17      of his claim, the Court finds that any amendment would be futile because his claim is  
18      barred by the statute of limitations. Therefore, the Court dismisses English's § 1983  
19      claim with prejudice.

20              Regarding the state law claims, a district court may decline to exercise  
21      supplemental jurisdiction over a state law claim if the district court has dismissed all  
22      claims over which it has original jurisdiction. 28 U.S.C. § 1337(c)(3). In this case, the

1 Court declines to exercise supplemental jurisdiction over English's state law claims and  
2 dismisses them without prejudice.

3 **III. ORDER**

4 Therefore, it is hereby **ORDERED** that the County's motion to dismiss (Dkt. 9) is  
5 **GRANTED**; English's § 1983 claim is **DISMISSED with prejudice**; English's state law  
6 claims are **DISMISSED without prejudice**; and the Clerk shall close this case.

7 Dated this 23rd day of January, 2018.

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11 BENJAMIN H. SETTLE  
12 United States District Judge  
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